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10/642,513	08/15/2003	Thomas A. Osborne	12730-11	3839

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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER	
MATTHEWS, WILLIAM H	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/642,513
Filing Date: August 15, 2003
Appellant(s): OSBORNE ET AL.

Mindy N. Rittner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2-12-08 appealing from the Office action mailed 7-16-07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,800,526	ANDERSON ET AL	9-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 45,46,48-50,53,58, and 60-62 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by Anderson et al. US PN 5,800,526.

Anderson et al. disclose in figures 2-7, 8-10,16, and 17 a vascular prosthesis comprising a tubular or cannular graft 52 (see figures 8-10) and a stent 10 (see figures 2-10,16 and 17), wherein the stent comprises a wire having a bend 18 (figures 4-7) and integrally formed barbs 20 (see figures 4-7 and col. 6 lines 41-63). The stent and barbs are machined from a flat sheet of metal (by laser cutting or chemical etching) such that the barbs will be directed outwardly upon expansion of the stent due to removed material in the area of the barbs (see col. 9 lines 16-26 and 42-50). Figures 4-7 clearly show top and side views of the unexpanded and expanded states of the barbed stent. In figure 7, bends 18 are shown to face outwardly such that barbs 20 also face outwardly. Thus the barbs 20 are not bent with respect to the stent wire. Figures 16 and 17, as described at col. 12 lines 52-65, describe additional embodiments in which

integral barbs are formed outward (figure 16) or point outward upon expansion (figure 17, similarly to figures 5 and 7).

Regarding the limitation "such that the barb points in a predetermined direction", each embodiment of Anderson et al. described above provides barbs for facing in a predetermined direction (i.e. a distal or proximal direction, or a direction that is acute to the longitudinal axis).

(10) Response to Argument

Appellant states, essentially, that Anderson et al. disclose the invention substantially as claimed but fail to provide barbs that 1) point in a pre-determined direction and/or 2) are unbent with respect to the stent wire and free of weakening due to bending. Examiner disagrees because Anderson et al. disclose at least three embodiments of barbed stent structures comprising barbs free of weakened regions due to bending and that face in a pre-determined direction. Figures 2, 16, and 17 each depict an embodiment of a stent having integrally formed barbs (from laser cutting or chemical etching). These embodiments are further described to include a feature that will direct the barbs to face outwardly upon expansion of the stent. See col. 9 lines 19-26 and col. 12 lines 60-65, as well as figures 4-5 (unexpanded) and figures 6-7 (expanded states showing the wire 18 bent to direct the unbent barbs 20 outwardly).

Furthermore, the limitation "pre-determined direction" is readable on at least an "outward" direction as disclosed throughout the Anderson et al. disclosure (col. 9 lines 20-22 and col. 12 lines 60-65). Appellant appear to believe Anderson et al. only teach arbitrary or random angles and that the limitation "pre-determined direction" requires a

precise angle. Examiner disagrees because a "direction" may be broadly interpreted as inward, outward, distal, proximal, etc.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

William Matthews

/William H. Matthews/

Primary Examiner AU 3774

Conferees:

Corrine McDermott

/Corrine M McDermott/

Supervisory Patent Examiner, Art Unit 3738

Thomas Barrett

/Thomas Barrett/

TQAS TC 3700